

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

DAVID AND KIMBERLY BASS,  
INDIVIDUALLY AND AS HUSBAND  
AND WIFE.

PLAINTIFFS

vs.

CASE NO. **3:04CV00413GH**

FLYING J. INC., ET AL.

DEFENDANTS

**ORDER**

Pending before the Court is plaintiffs' motion to quash defendants' notice of video deposition. The notice schedules the evidentiary deposition of Dr. Mark Capehart, an orthopedic surgeon in Tulsa, Oklahoma who conducted an independent medical examination of plaintiff David Bass. The deposition is scheduled for August 7, 2006 at 4:30 p.m.

It appears that the parties have had difficulties scheduling Dr. Capehart's deposition prior to August 7<sup>th</sup>, which is one week before the trial of this action. Plaintiffs contend that they have not been provided any reports concerning Dr. Capehart's opinions. Defendants counter that they have provided Dr. Capehart's report and there is nothing further for defendants to provide plaintiffs. Plaintiffs also wish to do a discovery deposition prior to the videotaped evidentiary deposition. Defendants do not object to this request even though the discovery deadline has passed.

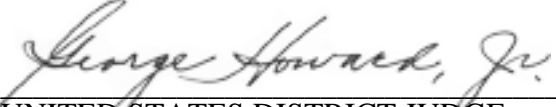
Plaintiffs also contend that their counsel will be unavailable. One counsel is scheduled to be in Little Rock District Court that day although it does not appear that the court matter will take all day. Co-counsel is scheduled to be out of town that day, although plaintiffs do not indicate the reason. Defendants state that if necessary, plaintiffs' counsel can participate by telephone.

The Court is not persuaded that there is good reason for quash the notice of deposition. It appears that plaintiffs' counsel can make arrangements for at least one of the attorneys to attend the deposition is necessary or to participate by telephone. Defendants have agreed to allow discovery

of Dr. Capehart prior to the evidentiary deposition.

Accordingly, the motion to quash and to exclude expert witness is denied.

IT IS SO ORDERED this 3<sup>rd</sup> day of August, 2006.

  
UNITED STATES DISTRICT JUDGE